

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington, D.C.

CAPSTONE LOGISTICS, LLC

Employer

and

TEAMSTERS LOCAL 863

Petitioner

CASE 22-RC-137642

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**BRIEF AND APPENDIX IN SUPPORT OF PETITIONER'S EXCEPTIONS  
TO THE REGIONAL DIRECTOR'S REPORT ON OBJECTION**

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## STATEMENT OF THE CASE

Petitioner's exceptions arise out of an election conducted by Region 22 on November 7, 2014. It is Petitioner's position that the Regional Director erred in finding that the Board Agent did not abuse his discretion in failing to ask Petitioner's representative the basis for its challenge to the eligibility of a voter when Petitioner's observer unexpectedly did not arrive at the start of the election.

Petitioner filed its RC Petition on September 26, 2014. The Regional Director approved the parties' Stipulated Election Agreement ("Agreement") (a1) on October 20, 2014.<sup>1</sup> Pursuant to the terms of the Agreement, a secret ballot election would be conducted on November 7, 2014 in a unit comprising the following:

All full-time freight handler unloaders, lead freight handler unloaders, and warehouse clerical employees employed by the Employer at its 20 Theodore Conrad Drive, Jersey City, New Jersey facility, but excluding all office clerical employees, confidential employees, officers, managerial employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

On October 28, 2014, Petitioner's counsel sent an email to the Board Agent asking whether he needed to know the names of any voters who Petitioner intended to challenge (a10). The Board Agent responded on October 29, 2014 in relevant part as follows:

\* \* \* \*

You do not have to provide me with the names of the individuals you wish to challenge, however, as a courtesy, I would ask that you provide an objection or challenge list because I can prep the challenge ballot envelopes ahead of time.

Accordingly, if you are to have a [sic] observer present they will challenge the eligible voter on the objection or challenge list.

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<sup>1</sup> "a" followed by a number will refer to Petitioner's appendix attached hereto. Pursuant to Section 102.69(g) of the Board's Rules, the evidence submitted in support of Petitioner's exception is attached (a5-14).

Further, if the Union will have an observer present and would request that I challenge the eligible voters on the said list noted above (if you are to provide to me) it is not my responsibility to challenge them. Thus, I am not held accountable if a [sic] eligible voter was not challenge [sic], because of whatever circumstances may be made of [sic] occurred (a10).

Petitioner's counsel then sent a letter to the Board Agent dated November 3, 2014 with the name of the employee who Local 863's observer would challenge (a13).

The secret ballot election was conducted on November 7, 2014. Local 863's Business Agent arranged for an observer to be present.<sup>2</sup> Local 863's observer was late and did not appear at the start of the election. Local 863's Business Agent was present for the pre-election conference and at the start of the election. He advised the Board Agent that Local 863's observer would be late. The Board Agent did not ask Petitioner's Business Agent for the basis for Local 863's challenge to the voter. Local 863's Business Agent would have advised the Board Agent of the basis for Local 863's challenge had he been asked (a9).

The election resulted in a tie. Accordingly, a tally of ballots was issued and served on the parties indicating that a majority of votes counted had not been cast for Local 863 (a4).

On November 10, 2014, Petitioner filed a timely objection to the conduct affecting the results of the election (a25). On or about November 19, 2014, Petitioner also filed timely evidence in support of its objection including the Affidavit of Charles O'Mara, Petitioner's Business Agent (a5).

The Regional Director issued his "Report on Objection" to the election on December 12, 2014 (a16).<sup>3</sup> The Regional Director recommended that Petitioner's objection be overruled in its entirety and that the appropriate certification issue (a22).

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<sup>2</sup> These facts are set forth in the Affidavit of Charles O'Mara which was submitted as evidence in support of Local 863's objection (a8).

<sup>3</sup> The Regional Director also issued an *erratum* sheet on December 15, 2014 (a15).

## ARGUMENT

### **THE NLRB SHOULD ALLOW PETITIONER'S OBJECTION BECAUSE THE REGIONAL DIRECTOR ERRED IN FINDING THAT THE BOARD AGENT DID NOT ABUSE HIS DISCRETION UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE**

It is Petitioner's position that the Regional Director erred in finding that the Board Agent did not abuse his discretion under the particular facts and circumstances of this case. The Regional Director's decision involves an inflexible application of the provision of the Board's Casehandling Manual.

At the outset, Petitioner does not dispute the Board's longstanding position that the parties to an election bear the primary responsibility for challenging voter eligibility. See *Balfre Gear Manufacturing Company*, 115 NLRB 19 (1956). Petitioner also does not dispute the Regional Director's assertion that the Board Agent was not given reason to believe that the employee, Gifford Strachan, was ineligible, relying upon *H & L Distributing Company*, 206 NLRB 169 (1973) (a22). However, given the unique facts and circumstances, the Regional Director erred in finding that the Board Agent did not abuse his discretion in not requesting the basis for Petitioner's challenge and then in not challenging Strachan's vote.

The starting point is Section 11338.2(b) of the Board's Casehandling Manual for Representation Proceedings which states, in pertinent part the following:

The Board agent must challenge anyone whose name is not on the eligibility list or who has been permitted by the Regional Director or the Board to vote subject to challenge (Sec. 11338.8). Also, the Board agent must challenge a voter if he/she knows or has reason to believe that the voter is ineligible to vote, but in this instance only if none of the parties voices a challenge on that ground.

The Board agent will not make challenges for parties when such parties have observers present. *Galli Produce Co.*, 269 NLRB 478 (1984). However, if any party does not have an observer, the Board agent should, upon request and on good cause alleged by the party, state that party's challenge to a voter whose eligibility that party questions. The Board agent should advise the party that

he/she does not assume responsibility for assuring that the voter's ballot will be challenged. The challenge is not made by the Board, but is in terms of stating the party's challenge (e.g., "the union has challenged your right to vote on the ground that you are a supervisor").

In applying this provision, as well as other provisions in the Manual, the introduction of the Manual also includes a warning that the provisions are not intended to be binding procedural rules and that Board representatives are expected to exercise professional judgment depending upon the circumstances. The "Purpose of the Manual" provides, in relevant part, as follows:

Although it is expected that the Agency's Regional Directors and their staffs will follow the Manual's guidelines in the handling of cases, it is also expected that in their exercise of professional judgment and discretion, there will be situations in which they will adapt these guidelines to circumstances. Thus, the guidelines are not intended to be and should not be viewed as binding procedural rules. Rather, they provide a framework for the application of the Board's decisional law and rules to the facts of the particular situations presented to the Regional Directors and their staffs, consistent with the purposes and policies of the Act.

The Board has also cautioned that rigid application adherence to the guidelines that could frustrate the purposes of Section 11338. *Schwartz Brothers Inc. and District Records Inc.*, 194 NLRB 150, 151 (1971), *enfd.* 475 F.2d 926 (D.C. Cir. 1973).

The particular facts and circumstances of this case provided the opportunity for the Board Agent to exercise his professional judgment and to deviate from the general procedure expressed in Section 11338. The Board Agent was well aware that Local 863 intended to challenge Gifford Strachan's eligibility to vote and that Local 863 expected an observer to be present for the election to voice Local 863's challenge. The observer was unexpectedly late and was not present to voice Local 863's challenge to Mr. Strachan's eligibility to vote. Local 863's Business Agent then advised the Board Agent that the observer would not be present. At that point, the Board Agent should have exercised his discretion and asked the Business Agent for the basis for Local 863's challenge to Mr. Strachan's eligibility. In light of the observer's inability to be present as

expected, the Board Agent should then have challenged Strachan's vote pursuant to Section 11338. Local 863's position is based upon the unique facts and circumstances of this case. The Board Agent abused his discretion in failing to request the basis for Local 863's challenge after he became aware that Local 863's observer could not be present, and then in failing to challenge the vote.

In *Laubenstein and Portz Inc.*, 226 NLRB 804, 805 (1976), the Board concluded that the Board Agent did not fulfill his duty to challenge a ballot and should have exercised his professional judgment to depart from the guidelines based upon the circumstances. In *Laubenstein*, the parties agreed that an employee, whose supervisory status was in dispute, would be included on the *Excelsior* list but would vote subject to challenge. The union's observer, as was the case here, was expected to be present but did not show up during the pre-election period. When the Board Agent asked about the observer, the union's representative testified that he would get along without one but wanted the employee challenged pursuant to the terms of the parties' agreement. Although the Board's agent did not say that he would challenge the employee, the union's representative assumed that he would do so when the Board agent reached for his briefcase and pulled out a challenge envelope. The Board noted that the Board's agent was aware of the settlement agreement and the understanding of the parties that the employee was to be challenged. Id.

Based upon these circumstances, the Board concluded that the Board agent should have challenged the employee as had been agreed by the parties.

With this unique situation confronting the board agent, it was incumbent upon him to challenge [the employee's] ballot in order to implement a quintessential condition of the settlement agreement which had been worked out by the parties and approved by the board. Id.



The Board rejected the hearing officer's reliance upon Section 11338 because the union did not plead an inability to obtain an observer, did not advance any reason for the challenge, and did not request the Board agent to challenge the employee. *Id.* In concluding that the Board agent should have exercised his professional judgment to depart from the guidelines, the Board stated that it was " ... obvious that the Board agent was not cognizant of and did not heed the warning against procrustean inflexibility in applying the guidelines." *Id.* According to the Board, professional judgment required the Board agent to depart from the guidelines to challenge the employee's ballot. Because the Board agent did not exercise this professional judgment, the Board set aside the election and directed a second election. *Id.* at 806.

While the facts and circumstances in *Laubenstein* are different than the facts and circumstances in this case, there is no reason for a different result. As was true in *Laubenstein*, Petitioner's Business Agent did not advise the Board Agent of the basis for the challenge and did not request that the Board Agent challenge Mr. Strachan. As was also true in *Laubenstein*, the union's observer did not arrive in time to challenge Strachan's eligibility to vote. Under these unique circumstances, as was true in *Laubenstein*, the Board Agent should at the very least have asked the Business Agent for the basis of Local 863's challenge to Strachan's eligibility. There is no dispute that the Board Agent was aware that Local 863 intended to challenge Strachan's vote. It would not have interfered with the election, or delayed the election in any way, if the Board Agent had simply asked Local 863's Business Agent for the basis for the challenge and then challenged the employee's eligibility. In failing to do so, the Board Agent did not exercise his professional judgment to deviate from the Manual and, therefore, abused his discretion.

Based upon these facts and circumstances, the Regional Director erred in concluding that the Board Agent was not obligated to inquire into the reason Petitioner wanted to challenge the

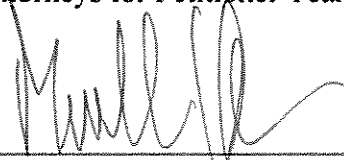
employees' ballot, and that his finding was supported by *H & L Distributing, supra* (a22). Petitioner does not dispute that the Board Agent did not have independent reason to believe that Strachan was ineligible to vote. Up to the point when Petitioner's observer did not arrive on time for the election, there would have been no reason to provide him with an independent basis. However, it is also undisputed that the Board Agent was aware that Local 863 intended to challenge Strachan's eligibility. When Local 863's observer did not arrive on time, the Board Agent should have, but did not, request the basis of Petitioner's challenge from Petitioner's representative who was present before the start of the election.

### CONCLUSION

For all the foregoing reasons, Petitioner IBT Local 863 respectfully requests that the NLRB allow its exceptions, set aside the election and direct a second election, or, alternatively, order a hearing to be conducted on any material factual issues.

Respectfully submitted,

ZAZZALI FAGELLA NOWAK,  
KLEINBAUM & FRIEDMAN  
One Riverfront Plaza – Suite 320  
Newark, New Jersey 07102  
(973) 623-1822  
Attorneys for Petitioner Teamsters Local 863



---

Paul L. Kleinbaum

January 12, 2015

# APPENDIX

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

**CAPSTONE LOGISTICS, LLC**

**Case 22-RC-137642**

The parties **AGREE AS FOLLOWS:**

**1. PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**2. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Capstone Logistics, LLC is a Delaware corporation engaged in providing freight handling and other related services with its headquarters located in Peachtree Corners, Georgia and various place of businesses located throughout the United States; specifically, a place of business located in Jersey City, New Jersey the only location involved herein. During the preceding twelve months, the Employer provided services valued in excess of \$50,000 to companies located outside of the state of New Jersey.

**3. LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

**4. ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

**DATE:** Friday, November 7, 2014 **HOURS:** 5:30 a.m. to 6:30 a.m.

**PLACE:** Operations conference room adjacent to the dispatch office at the Employer's 20 Theodore Conrad Drive Jersey City, NJ facility

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

**5. UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time freight handler unloaders, lead freight handler unloaders and warehouse clerical employees employed by the Employer at its 20 Theodore Conrad Drive, Jersey City, New Jersey facility, but excluding all office clerical employees, confidential employees, officers, managerial employees, professional employees, guards and supervisors as defined in the Act, and all other employees

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending, Saturday October, 11 2014**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**6. ELECTION ELIGIBILITY LIST.** Within seven (7) days after the Regional Director has approved this Agreement, the Employer shall provide to the Regional Director an election eligibility list containing the full names and addresses of all eligible voters. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Health Care Facility*, 315 NLRB 359 (1994).

**7. THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of any voters or potential voters who only read a language other than English.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by Teamsters Local 863?" The choices on the ballot will be "Yes" or "No".

**8. NOTICE OF ELECTION.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer will post copies of the Notice of Election in conspicuous places and usual posting places easily accessible to the voters at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

**9. ACCOMMODATIONS REQUIRED.** All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

**10. OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

**11. TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

**12. POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

**CAPSTONE LOGISTICS, LLC**

(Employer)

By /s/ Steven S. Goodman 10/20/14

(Name)

(Date)

**TEAMSTERS LOCAL 863**

(Petitioner)

By /s/ Paul L. Kleinbaum 10/16/14

(Name)

(Date)

(Union)

Recommended: /s/ Avinish Kuma 10/20/14

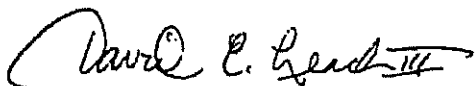
AVINISH KUMA, Board Agent (Date)

By \_\_\_\_\_

(Name)

(Date)

Date approved: 10/20/14



Regional Director, Region 22  
National Labor Relations Board

FORM NLRB-750  
(7-10)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

Date Filed

Case No. 22-RC-137642 09/26/2014

Date Issued November 7, 2014

City Jersey City State NJ

Type of Election:  
(Check one):

(If applicable check  
either or both):

- ☒ Stipulation
- ☐ Board Direction
- ☐ Consent Agreement
- ☐ RD Direction  
Incumbent Union (Code)

- ☐ 8(b) (7)
- ☐ Mail Ballot

**CAPSTONE LOGISTICS, LLC**  
**(EMPLOYER)**

AND

**TEAMSTERS LOCAL 863**  
**(PETITIONER)**

**TALLY OF BALLOTS**

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters 12
- 2. Number of Void ballots 0
- 3. Number of Votes cast for TEAMSTERS LOCAL 863 6
- 4. ~~Number of Votes cast for~~
- 5. ~~Number of Votes cast for~~
- 6. Number of Votes cast against participating labor organization(s) 6
- 7. Number of Valid votes counted (sum 3, 4, 5, and 6) 12
- 8. Number of challenged ballots 0
- 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 12
- 10. Challenges are (not) sufficient in number to affect the results of the election.
- 11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for TEAMSTERS LOCAL 863

REGION 22

For the Regional Director [Signature]

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For [Signature]  
**(EMPLOYER)**

For [Signature]  
**(PETITIONER)**

For \_\_\_\_\_



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 22

CAPSTONE LOGISTICS, LLC

Employer

and

TEAMSTERS LOCAL 863

Petitioner

CASE NO. 22-RC-137642

**EVIDENCE IN SUPPORT OF IBT LOCAL 863'S OBJECTIONS TO ELECTION**

Pursuant to Section 102.69(a) of the Rules and Regulations of the National Labor Relations Board, the International Brotherhood of Teamsters, Local 863 ("Local 863") hereby submits evidence in support of its objections that the conduct of the Board Agent interfered with, and affected the outcome of, the election held on November 7, 2014 as follows:

**Objection No. 1**

The Board Agent failed to challenge employee Gifford Strachan despite being notified by Local 863 prior to the election in accordance with the Board Agent's instruction that it intended to challenge the employee. When Local 863 was unable to arrange for an observer, the Board Agent never asked Local 863's representative, who was present prior to the start of the election, to state the basis for Local 863's challenge.

Evidence in support of Objection No. 1:

1. Local 863 Business Agent Charles O'Mara will testify that he was present prior to the start of the election. He learned only the morning of the election that the employee designated to be Local 863's observer would be late. He will further confirm that the Board Agent did not question him about the basis for Local 863's challenge to employee Gifford Strachan once he advised the Board Agent that the observer would be late. (See attached Affidavit).

2. Local 863 attorney Paul L. Kleinbaum received an email from Board Agent Avinish Kuma on October 29, 2014, a copy of which is attached. In the email, the Board Agent, among other issues, advised that he would challenge eligible voters if an observer was not present. He did not advise counsel that it would be necessary to provide a statement of the reason for the challenge prior to the election in the event an observer was not present. In response to this email, counsel submitted a letter to the Board Agent stating the name of the employee who would be subject to challenge. A copy of the letter is attached.

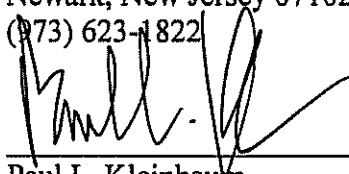
Local 863 respectfully submits that the foregoing conduct by the Board Agent interfered with the employees' free and unfettered choice in selecting a collective bargaining representative and materially affected the outcome of the election, which was decided by a tie vote. Local 863 objects to these acts and, as a remedy, requests that the Regional Director review and investigate

the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing thereon.

Respectfully submitted,

Teamsters Local 863  
by its Attorneys,

ZAZZALI FAGELLA NOWAK,  
KLEINBAUM & FRIEDMAN  
One Riverfront Plaza – Suite 320  
Newark, New Jersey 07102  
(973) 623-1822

A handwritten signature in black ink, appearing to read 'Paul L. Kleinbaum', is written over a horizontal line.

Paul L. Kleinbaum

Dated: November 19, 2014

## Region 22

**Petitioner**

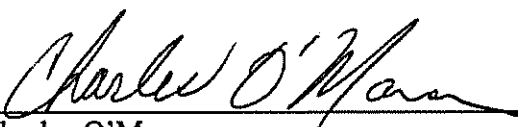
# AFFIDAVIT OF CHARLES O'MARA

**SS:**

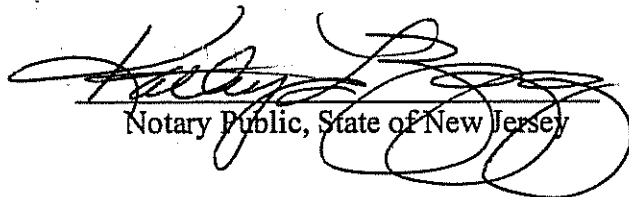
information to the Board Agent. The Board Agent did not ask me for the basis for Local 863's challenge to voter Gifford Strachen at any time before the balloting began. If the Board Agent had asked me, I would have told him that Local 863's challenge was based on information that Mr. Strachan was not on the payroll as of October 11, 2014, the cutoff date in the election stipulation.

4. It did not even occur to me to tell him the reason because I assumed the Board Agent would challenge the voter, and he did not tell me otherwise. Our observer arrived late but did not identify himself as the observer to the Board Agent. He told me that he did not think that he could not serve as the observer because he was late. I stayed throughout the balloting and through the tally of ballots.

5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Charles O'Mara

Sworn to and subscribed to me  
this 17<sup>TH</sup> day of November, 2014,

  
Notary Public, State of New Jersey

**KATHRYN L. ZIZZA**  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 29, 2019

## Paul Kleinbaum

---

**From:** Kuma, Avinish <Avinish.Kuma@nlrb.gov>  
**Sent:** Wednesday, October 29, 2014 2:04 PM  
**To:** Paul Kleinbaum  
**Subject:** RE: Capstone Stip

Paul:

I apologize for the delay in response, I have been out of the office taking affidavits majority of the week.

You do not have to provide me with names of the individuals you would wish to challenge, however, as a courtesy I would ask that you do provide a objection or challenge list, because I can prep the challenge ballot envelopes a head time.

Accordingly, if you are to have a observer present they will challenge the eligible voters on the objection or challenge list. Further, if the Union will not have an observer present and would request that I challenge eligible voters on the said list noted above (if you are to provide to me) it is not my responsibility to challenge them. Thus, I am not held accountable if a eligible voter was not challenge, because of whatever circumstances may of occurred.

Kindly,  
Avi

---

**From:** Paul Kleinbaum [mailto:[pkleinbaum@zazzali-law.com](mailto:pkleinbaum@zazzali-law.com)]  
**Sent:** Tuesday, October 28, 2014 8:41 AM  
**To:** Kuma, Avinish  
**Subject:** RE: Capstone Stip

Thank you. Do we need to let you know before the date of the election of any names to which Local 863 may object?



Paul L. Kleinbaum, Esq.  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman  
One Riverfront Plaza, Suite 320  
Newark, New Jersey 07102  
Telephone: 973.623.1822  
Facsimile: 973.623.2209  
Email: [pkleinbaum@zazzali-law.com](mailto:pkleinbaum@zazzali-law.com)  
Website: [www.zazzali-law.com](http://www.zazzali-law.com)

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**From:** Kuma, Avinish [<mailto:Avinish.Kuma@nlrb.gov>]  
**Sent:** Tuesday, October 28, 2014 8:29 AM  
**To:** Paul Kleinbaum  
**Subject:** RE: Capstone Stip

Paul:  
Good morning, please see the attached list.

Kindly,  
Avi

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**From:** Paul Kleinbaum [<mailto:pkleinbaum@zazzali-law.com>]  
**Sent:** Monday, October 27, 2014 1:50 PM  
**To:** Kuma, Avinish; Goodman, Steven S. (Long Island)  
**Subject:** RE: Capstone Stip

Please forward Excelsior list when received. Thank you.



Paul L. Kleinbaum, Esq.  
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One Riverfront Plaza, Suite 320  
Newark, New Jersey 07102  
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Facsimile: 973.623.2209  
Email: [pkleinbaum@zazzali-law.com](mailto:pkleinbaum@zazzali-law.com)  
Website: [www.zazzali-law.com](http://www.zazzali-law.com)

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**From:** Kuma, Avinish [<mailto:Avinish.Kuma@nlrb.gov>]  
**Sent:** Wednesday, October 22, 2014 11:20 AM  
**To:** Paul Kleinbaum; Goodman, Steven S. (Long Island)  
**Subject:** Capstone Stip

Steven & Paul:

I apologize for the delay in updating you concerning the Stip. The RD signed and approved the Stip. Steven I believe you have until next Monday to provide the excelsior list.

V/R

Avinish Kuma, Board Agent

National Labor Relations Board, Region 22

20 Washington Place, Fifth Floor

Newark, New Jersey 07102-3115

(p) 973-645-3318 | (f) 973-645-3852 | National Labor Relations Board





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CYNTHIA REVESZ†

AILEEN M. O'DRISCOLL\*

MARISSA A. McALEER\*\*

FLAVIO L. KOMUVES\*

JAMES R. ZAZZALI, JR.

OF COUNSEL

KATHLEEN NAPRSTEK CERISANO

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WILLIAM A. PASCARELL (1934-2010)

COUNSEL

JAMES R. ZAZZALI\*\*\*

[www.zazzali-law.com](http://www.zazzali-law.com)

\*Also admitted Pennsylvania

\*\*Also admitted New York

\*\*\*Also admitted New York &amp; D.C.

†New York Only

Please Reply to Newark

November 3, 2014

VIA FAX & REGULAR MAIL

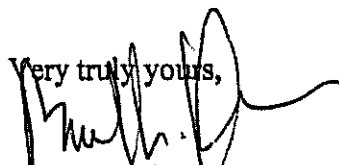
Avinish Kuma, Board Agent  
 National Labor Relations Board – Region 22  
 20 Washington Place – 5th Floor  
 Newark, New Jersey 07102

Re: **Capstone Logistics and IBT Local 863**  
**Case No. 22-RC-137642**

Dear Mr. Kuma:

The representation election is scheduled on Friday, November 7, 2014. Please be advised that Local 863 intends to challenge employee listed as eligible, Gifford Strachan.

Please call if you have any questions concerning this issue. Thank you.

Very truly yours,  
  
 Paul L. Kleinbaum

PLK:sl

cc: Charles O'Mara (via fax &amp; regular mail)

68630-1096

160727.doc

# Transmission Report

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ATTORNEYS AT LAW  
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(973) 623-1822  
Telecopier: (973) 623-2209

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#### PLEASE DELIVER TO:

NAME	COMPANY	FAX NUMBER
Avinish Kumar, Board Agent	NERB Region 22	973-645-3852

FROM: Paul L. Kleinbaum, Esq.

DATE: November 3, 2014

CLIENT/MATTER #: 68630-1096

#### COMMENT:

DOCUMENT: Letter dated November 3, 2014

SENT:

RE: Capstone Logistics and IBT Local 863

Case No. 22-RC-137642

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#### Abbreviations:

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HR: Host receive  
WS: Waiting send

PL: Polled local  
PR: Polled remote  
MS: Mailbox save

MP: Mailbox print  
RP: Report  
FF: Fax Forward

CP: Completed  
FA: Fail  
TU: Terminated by user

TS: Terminated by system  
G3: Group 3  
EC: Error Correct

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**CAPSTONE LOGISTICS, LLC**

Employer

and

**Case 22-RC-137642**

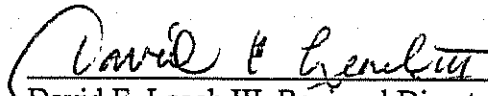
**TEAMSTERS LOCAL 863, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

Petitioner

**ERRATUM**

A Report on Objection issued on December 12, 2014 in the above-captioned case. The Report referenced specified documents that were to be attached as Appendix 1, Appendix 2 and Appendix 3. These attachments were inadvertently omitted from the copies of the issued Report. Attached hereto is a copy of the Report on Objection that includes the attachments.

Dated at Newark, New Jersey, this 15<sup>th</sup> day of December, 2014.

  
David E. Leach III, Regional Director  
National Labor Relations Board  
Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

Attachment

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**CAPSTONE LOGISTICS, LLC**

Employer

and

**Case 22-RC-137642**

**TEAMSTERS LOCAL 863, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

Petitioner

**REPORT ON OBJECTION**

Pursuant to a Stipulated Election Agreement entered into by the parties and approved by the undersigned on October 20, 2014, a secret ballot election was conducted on November 7, 2014 among all full-time freight handler unloaders, lead freight handler unloaders and warehouse clerical employees employed by the Employer at its 20 Theodore Conrad Drive, Jersey City, New Jersey facility, but excluding office clerical employees, confidential employees, officers, managerial employees, professional employees, guards and supervisors as defined in the Act, and all other employees. Thereafter, a Tally of Ballots was duly served upon the parties which showed the following:

Approximate number of eligible voters	12
Void ballots	0
Votes cast for the Petitioner	6
Votes cast against participating labor organizations	6
Valid votes counted	12
Challenged ballots	0
Valid votes counted plus challenged ballots	12

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted plus challenged ballots has not been cast for Teamsters Local 863.

On November 10, 2014,<sup>1</sup> the Petitioner filed a timely objection to conduct affecting the results of the election, which is attached hereto as Appendix 1.<sup>2</sup>

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned caused an investigation to be made of the Petitioner's objection, during which all parties were afforded full opportunity to submit evidence on the issues involved. The investigation disclosed and the undersigned finds and reports as follows:

### **THE OBJECTION**

In its single objection, the Petitioner alleges that at the November 7 election, where it was unable to secure an election observer to represent it during the election, the presiding Board agent failed to challenge the ballot of voter Gifford Strachan despite being notified by the Petitioner prior to the election that the Petitioner intended to challenge the employee and that the Board agent never asked the Petitioner's representative to state the basis of the challenge. Based on the foregoing, the Petitioner contends that the Board agent's failure to inquire into the basis for the challenge and to challenge the ballot of the voter materially impacted the outcome of the election inasmuch as the election resulted in a tie vote and, thus, a single vote could have affected the result. The Employer asserts that the objection lacks merit.

In support of its objection,<sup>3</sup> the Petitioner submitted a copy of an October 29 email communication, attached hereto as Appendix 2, between the Board agent and the Petitioner's

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<sup>1</sup> All dates hereafter are 2014 unless otherwise specified.

<sup>2</sup> The critical period for considering objectionable conduct in this matter extends from September 26, 2014, the filing date of the petition, until November 7, 2014, the date of the election. *Goodyear Tire and Rubber Company*, 138 NLRB 453 (1962).

<sup>3</sup> The Petitioner did not present evidence in support of its position that Strachan is ineligible to vote.

Counsel concerning the procedure for raising questions concerning disputes over voting eligibility.

In response, the Board agent replied as follows:

You do not have to provide me with names of individuals you wish to challenge. However, as a courtesy I would ask that you provide an objection or challenge list, because I can prep the challenge ballot envelopes ahead [of] time. (If you are to have an observer present they will challenge the eligible voters on the objection or challenge list. Further, if the Union will not have an observer present and would request that I challenge eligible voters on the (challenge) list noted above [if you are to provide it to me], it is not my responsibility to challenge them. Thus, I am not held accountable if an eligible voter was not challenged, because of whatever circumstances may have occurred.

The independent investigation established that by letter dated November 3, attached hereto as Appendix 3, the Petitioner advised the Board agent that it intended to challenge Strachan. The letter did not state a basis or a ground for the Petitioner's challenge.

The Petitioner also submitted an affidavit from its Business Agent, Charles O'Mara, its representative who was present at the November 7 election. In his affidavit, O'Mara testified that prior to the election he had arranged to have an employee serve as the Petitioner's observer. However, on the morning of the election, he learned during a cell phone conversation with the designated observer that the observer would be late arriving for the election. O'Mara says he immediately informed the Board agent of the foregoing and requested that the Board agent challenge voter Gilbert Strachan on the Petitioner's behalf. O'Mara did not state the basis for the challenge. O'Mara testified that the Board agent did not ask him to state the basis for the challenge. O'Mara explained he did not state the basis of the challenge because he assumed the Board agent would challenge the voter as the Board agent did not tell O'Mara otherwise. Ultimately, voter Strachan voted without challenge.

Based on the foregoing, the Petitioner requests that the November 7 election be set aside and that a rerun election be conducted.

In response to the Petitioner's objection, the Employer submitted a position statement noting that its attorney attended the pre-election conference held at the polling place immediately prior to the opening of the polls. The attorney would attest that the Union's Business Agent "did not raise any issue of voter eligibility, nor did he ask the Board agent to challenge any voter." The Employer contends further that the Petitioner's objection fails as a matter of law inasmuch as the Board has long held that it is not the presiding Board agent's responsibility to challenge voters, absent actual knowledge that the employee is ineligible to vote.<sup>4</sup> Accordingly, the Employer requests that the Petitioner's objection be overruled and that the Board issue a Certification of Results certifying that a majority of the valid votes counted plus challenged ballots has not been cast for the Petitioner.

### ANALYSIS

Section 11338 of the Board's Casehandling Manual instructs, in pertinent part, that "(t)he challenge procedure provides a method whereby a voter's eligibility to vote may be called into question, the ruling on the question may be at least temporarily reserved and the questioned voter may memorialize his/her desires in the event these desires should have relevance in the future—all without disrupting the regular flow of votes." Section 11338.2(b) of the Manual further instructs the following:

The Board agent must challenge anyone whose name is not on the eligibility list or who has been permitted by the Regional Director or the Board to vote subject to challenge (Sec. 11338.8). Also, the Board agent must challenge a voter if he/she knows or has reason to believe that the voter is ineligible to vote, but in this instance only if none of the parties voices a challenge on that ground.

The Board agent will not make challenges for parties when such parties have observers present. *Galli Produce Co.*, 269 NLRB 478 (1984). However, if any party does not have an observer, the Board agent should, **upon request and on good cause alleged by the party**, state that party's challenge to a voter whose eligibility that party questions. **The Board agent should advise the party that he/she does not assume responsibility for assuring that the voter's ballot will be challenged.** The challenge is not made by the Board, but is in terms of stating the party's

---

<sup>4</sup> Citing *Balfre Gear & Manufacturing Company*, 115 NLRB 19 (1956).

challenge (e.g., "the union has challenged your right to vote on the ground that you are a supervisor"). (emphasis added).

There is a factual dispute over whether, during the pre-election conference, O'Mara requested the Board agent to state a challenge on its behalf when its observer failed to arrive on time for the election. Assuming the Petitioner's version that O'Mara made the request, that the Board agent, by not responding, tacitly agreed to challenge Strachan's ballot, and that the Petitioner at no time stated a basis or ground for questioning Strachan's eligibility to vote in the election. The Manual section quoted *supra*, provides that a party requesting the Board agent to challenge a voter on its behalf must provide "good cause" for the challenge, i.e. a basis for the challenge to the voter's eligibility. Thus, it is clear that the Petitioner did not provide to the Board agent the requisite "good cause" necessary to challenge the voter on the Petitioner's behalf. However, the Petitioner argues that the Board agent had an affirmative duty to inquire as to the basis for the requested challenge.<sup>5</sup>

The Board has long held that parties to an election bear the primary responsibility for challenging voter eligibility.<sup>6</sup> A Board agent is not obligated to challenge a voter merely because the agent is aware of an eligibility dispute between the parties. Rather, the Board agent must challenge only where the agent has actual knowledge of the voter's ineligibility. *Solvent Services*, 313 NLRB 645, 646 (1994).

The Board, in *Laubenstein and Portz, Inc.*, 226 NLRB 804 (1976), made a narrow exception to the foregoing principal and set aside an election where, as here, a Board agent who tacitly agreed to state a party's challenge to a voter's ballot at an election failed to do so. In that case, the parties previously settled an unfair labor practice charge agreeing that an individual's ballot would be

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<sup>5</sup> I further note the explicit guidance that the Board cannot "assume responsibility for assuring that the voter's ballot will be challenged." In this regard, in the email communication between the Board agent and counsel for the Petitioner noted *supra*, it was clearly communicated to the Petitioner that the Board agent could not be responsible for assuring that any voter whose eligibility is called into question would, in fact, be challenged.

<sup>6</sup> *Balfre Gear & Mfg. Co.*, *supra* at 22 (1956); *Galli Produce Co.*, 269 NLRB 478 (1984).



challenged at the ensuing election on the ground that his supervisory status was in dispute. The Board agent conducting the election knew of the party's agreement regarding the challenge as well as the basis for the challenge. However, in *Fern Laboratories, Inc.*, 232 NLRB 379 (1077), at a pre-election conference held at the Regional Office, the parties furnished the Board agent with an agreement to permit two voters to vote "subject to challenge." During the election, an observer did not orally voice a challenge to a ballot cast by one of the voters subject to the parties' agreement, and neither did the Board agent. The Board held that although the Board agent conducting the election was aware of the parties' agreement, no one raised the agreement with the Board agent at the time of the challenge and the Board agent did not have a duty to state the challenge. The Board in *Fern* distinguished its earlier decision in *Laubenstein* by emphasizing that a deviation from an agreement settling an unfair labor practice charge is not the same as a deviation from an agreement resulting from a pre-election conference. In *H & L Distributing Company*, 206 NLRB 169 (1973), the union was unable to obtain an observer and relied on the Board agent to state challenges on its behalf. In overruling the objection to the Board agent's failure to state the challenges, the Board observed that there was no evidence the union presented facts to the Board agent sufficient to give him reason to believe that the prospective voters were, in fact, ineligible. Had the Union done so, the Board added, the Board agent would not have been precluded from challenging these individuals and, indeed, may have been under a duty to do so. Finally, the Board requires that a challenge be expressed clearly and unambiguously.<sup>7</sup>

The responsibility of a Board agent in the conduct of an election is a heavy one. In recognition of this responsibility, the Board has given Board agents broad discretion in the conduct of elections. See *Inland Waters Pollution Control*, 306 NLRB 342, 343 (1992). The line to be drawn between a limitation on that authority which would compel blind acceptance of challenges

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<sup>7</sup> *Monterey Carmel Convalescent, Inc., d/b/a Carmel Convalescent Hospital*, 252 NLRB 274 (1980).

which are frivolous, inadvertent, or interposed solely to obstruct orderly election procedure and laxity which would permit argument over the merits of a challenge during the course of an election is not a precise one and a rule of reason and the proper exercise of discretion must prevail. *Fulton Bag and Products Company*, 121 NLRB 268, fn. 5 (1958).

Here, as in *H & L Distributing, supra*, the Petitioner failed to present the facts, let alone a basis, to the Board agent sufficient to give him reason to believe that Strachan was, in fact, ineligible. The Board agent had no independent reason to believe that Strachan was ineligible to vote. In these circumstances, the Board agent's exercise of his discretion not to treat the Petitioner's request as a valid challenge because it lacked a specific basis or "good cause" as required by the manual, and therefore not seek further amplification from the Petitioner moments before the commencement of the election, did not, in my view, rise to the level of an abuse of his discretion.<sup>8</sup> Moreover, there is no case law which supports the underlying objection and I cannot conclude that the Board agent was obligated to inquire into the reason the Petitioner wanted to challenge Strachan's ballot.

Based on the foregoing, and also noting the clear language contained in Manual Section 11338.2(b), I cannot conclude that the Board agent's conduct interfered with the election.

### CONCLUSION

In light of the foregoing, I recommend that the Petitioner's objection be overruled in its entirety and that the appropriate Certification issue.

### RIGHT TO FILE EXCEPTIONS

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8 as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001.

---

<sup>8</sup> Although the Board agent, exercising this discretion, might have validly stated the Petitioner's challenge to Strachan's ballot under the facts of this case, the agent's failure to do so is not a basis for setting aside the election.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objection and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

***Procedures for Filing Exceptions:*** Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on **December 29, 2014** at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>9</sup> A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

---

<sup>9</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Newark, New Jersey, this 12<sup>th</sup> day of December, 2014.



---

David E. Leach III, Regional Director  
National Labor Relations Board, Region 22  
Veterans Administration Building  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 22

CAPSTONE LOGISTICS, LLC

Employer

and

TEAMSTERS LOCAL 863

Petitioner

CASE NO. 22-RC-137642

OBJECTIONS TO ELECTION

Pursuant to Section 102.69(a) of the Rules and Regulations of the National Labor Relations Board, Teamsters Local 863 ("Local 863") hereby objects to the conduct that interfered with, and affected the outcome of, the election held on November 7, 2014 for the following reasons:

Objection No. 1

The Board Agent failed to challenge employee Gifford Strachan despite being notified by Local 863 prior to the election in accordance with the Board Agent's instruction that it intended to challenge the employee. When Local 863 was unable to arrange for an observer, the Board Agent never asked Local 863's representative, who was present prior to the start of the election, to state the basis for Local 863's challenge.

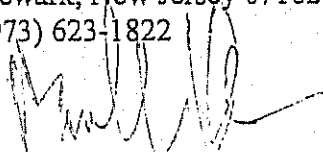
Local 863 respectfully submits that the foregoing conduct by the Board Agent interfered with the employees' free and unfettered choice in selecting a collective bargaining representative and materially affected the outcome of the election, which was decided by a tie vote. Local 863

objects to these acts and, as a remedy, requests that the Regional Director review and investigate the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing thereon.

Respectfully submitted,

Teamsters Local 863  
by its Attorneys,

ZAZZALI FAGELLA NOWAK,  
KLEINBAUM & FRIEDMAN  
One Riverfront Plaza – Suite 320  
Newark, New Jersey 07102  
(973) 623-1822



---


Paul L. Kleinbaum

Dated: November 10, 2014

## CERTIFICATION OF SERVICE

I, Paul L. Kleinbaum, hereby certify that on November 10, 2014, I served a copy of Teamsters Local 863's Objections to Election via email and first class mail on:

Steven S. Goodman, Esq.  
Jackson Lewis P.C.  
58 South Service Road, Suite 250  
Melville, NY 11747



---

Paul L. Kleinbaum

## Paul Kleinbaum

---

**From:** Kuma, Avinish <Avinish.Kuma@nlrb.gov>  
**Sent:** Wednesday, October 29, 2014 2:04 PM  
**To:** Paul Kleinbaum  
**Subject:** RE: Capstone Stip

Paul:

I apologize for the delay in response, I have been out of the office taking affidavits majority of the week.

You do not have to provide me with names of the individuals you would wish to challenge, however, as a courtesy I would ask that you do provide a objection or challenge list, because I can prep the challenge ballot envelopes a head time.

Accordingly, if you are to have a observer present they will challenge the eligible voters on the objection or challenge list. Further, if the Union will not have an observer present and would request that I challenge eligible voters on the said list noted above (if you are to provide to me) it is not my responsibility to challenge them. Thus, I am not held accountable if a eligible voter was not challenge, because of whatever circumstances may of occurred.

Kindly,  
Avi

---

**From:** Paul Kleinbaum [mailto:pkleinbaum@zazzali-law.com]  
**Sent:** Tuesday, October 28, 2014 8:41 AM  
**To:** Kuma, Avinish  
**Subject:** RE: Capstone Stip

Thank you. Do we need to let you know before the date of the election of any names to which Local 863 may object?



Paul L. Kleinbaum, Esq.  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman  
One Riverfront Plaza, Suite 320  
Newark, New Jersey 07102  
Telephone: 973.623.1822  
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Website: [www.zazzali-law.com](http://www.zazzali-law.com)

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**From:** Kuma, Avinish [<mailto:Avinish.Kuma@nrlb.gov>]  
**Sent:** Tuesday, October 28, 2014 8:29 AM  
**To:** Paul Kleinbaum  
**Subject:** RE: Capstone Stip

Paul:  
Good morning, please see the attached list.

Kindly,  
Avi

---

**From:** Paul Kleinbaum [<mailto:pkleinbaum@zazzali-law.com>]  
**Sent:** Monday, October 27, 2014 1:50 PM  
**To:** Kuma, Avinish; Goodman, Steven S. (Long Island)  
**Subject:** RE: Capstone Stip

Please forward Excelsior list when received. Thank you.



Paul L. Kleinbaum, Esq.  
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One Riverfront Plaza, Suite 320  
Newark, New Jersey 07102  
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Website: [www.zazzali-law.com](http://www.zazzali-law.com)

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**Sent:** Wednesday, October 22, 2014 11:20 AM  
**To:** Paul Kleinbaum; Goodman, Steven S. (Long Island)  
**Subject:** Capstone Stip

Steven & Paul:

I apologize for the delay in updating you concerning the Stip. The RD signed and approved the Stip. Steven I believe you have until next Monday to provide the excelsior list.

V/R

Avinish Kuma, Board Agent

National Labor Relations Board, Region 22

20 Washington Place, Fifth Floor

Newark, New Jersey 07102-3115

(p) 973-645-3318 | (f) 973-645-3852 | National Labor Relations Board



**ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN**

**FILE COPY**

**A PROFESSIONAL CORPORATION**

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Please Reply to Newark

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†New York Only

November 3, 2014

VIA FAX & REGULAR MAIL

Avinish Kuma, Board Agent  
National Labor Relations Board – Region 22  
20 Washington Place – 5th Floor  
Newark, New Jersey 07102

Re: Capstone Logistics and IBT Local 863  
Case No. 22-RC-137642

Dear Mr. Kuma:

The representation election is scheduled on Friday, November 7, 2014. Please be advised that Local 863 intends to challenge employee listed as eligible, Gifford Strachan.

Please call if you have any questions concerning this issue. Thank you.

Very truly yours,

  
Paul L. Kleinbaum

PLK:sl

cc: Charles O'Mara (via fax & regular mail)

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APPENDIX 3

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington, D.C.

CAPSTONE LOGISTICS, LLC

Employer

and

TEAMSTERS LOCAL 863

Petitioner

CASE 22-RC-137642

CERTIFICATION OF SERVICE

I, the undersigned, am a legal assistant with the law firm of Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys for Petitioner Teamsters Local 863 in the above matter.

On January 12, 2015, I caused to be filed Petitioner's Exceptions to the Regional Director's Report on Objection dated December 12, 2014, supporting Brief and Appendix and this Certification of Service as follows:

Via electronic filing to:

Gary Shinnars, Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, NW  
Washington, D.C. 20570-0001

and


Via email to:

David E. Leach, III, Regional Director  
National Labor Relations Board – Region 22  
20 Washington Place – 5th Floor  
Newark, New Jersey 07102

and

Steven S. Goodman, Esq.  
Jackson Lewis P.C.  
58 South Service Road, Suite 250  
Melville, NY 11747

I hereby certify that the foregoing, statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Susan Loveland

Dated: January 12, 2015